TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING #97-27

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of local option sales tax to specialized custom kit buildings.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

The taxpayer is a Tennessee corporation engaged in commercial construction. A division of the taxpayer constructs specialized custom "kit" buildings. The taxpayer will specify the dimensions including the outside walls, placement of windows, etc. of a specialized building and forward such specifications to its vendor (hereinafter referred to as "the vendor"). The vendor will then quote a price to the taxpayer for the manufacture of the building. The parts of the building are not interchangeable and would not fit other buildings because of the specifications. Taxpayer must commit payment before the vendor begins the manufacture of the kit. The buildings at issue here are not the "standard" building with interchangeable parts which is sold by the particular vendor.

Because of the size of the buildings, the taxpayer receives them in a disassembled state and assembles them at the job site. These buildings are transportable and in certain instances the taxpayer has disassembled the buildings and moved them to another location. It is cheaper to disassemble a building and move it to another location than to purchase a new building. The buildings are manufactured to the taxpayer's specifications

and are not interchangeable. The vendor collects and remits sales or use tax on the sale of these buildings.

Additional items not furnished by the vendor are also added to the building before it is completed and occupied.

ISSUE

Are the buildings which are purchased by the taxpayer from the vendor a single article and thus subject to the local option cap as set forth in T.C.A. § 67-6-702(a)(1)?

RULING

The buildings do not constitute a single article. Therefore, the local option cap is not applicable to the building but rather to each component of the building kit.

ANALYSIS

The local option sales tax provides that the local tax applies only to the first $1,600 of the tax base (frequently referred to as the "cap") for any single article of tangible personal property. T.C.A. § 67-6-702(a)(1).

"Single article" is defined in T.C.A. § 67-6-702(d) which states:

> "Single article" means that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article. Parts or accessories for motor vehicles that are installed at the factory and delivered with the unit as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or which are included as part of the sales price of the vehicle shall be treated as a part of the unit. In addition, all necessary parts and equipment installed by a motor vehicle dealer which are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the unit. Boat motors, other parts or accessories for boats, freight, and labor, excluding trailers, shall be treated as part of the boat unit in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle unit.

There are a number of authorities which address the application of the local tax to buildings and/or building components.

In *Pidgeon-Thomas Iron Co. v. Garner,* 495 S.W.2d 826 (Tenn. 1973), the taxpayer conducted a metal fabricating business. Among the products it fabricated were a steel dome for a school building, a steel bridge over an interstate highway, and a structural steel frame for a warehouse. These items were fabricated by the taxpayer, who ordered the component parts, cut, shaped, formed, and assembled the completed structure. The structure was dismantled at the place of business, shipped to the job site and erected.[1] The taxpayer argued that the local tax should be limited to the local maximum on each sale of a fabricated structure. The Department argued that the local tax should apply to the entire sale price. The court agreed with the Department, holding that the taxpayer was not a seller at retail and that the various components of the structures were not resold, rather, that the taxpayer was the user of the materials which were incorporated into the structures. With the taxpayer being the user, tax was due not upon the price of the completed structure but upon the individual single articles which the taxpayer used in fabricating the structures. *Id.* at 832.

There are three Opinions of the Attorney General which provide guidance in answering the question presented in this ruling request. In an opinion dated October 2, 1968 (hereinafter Attorney General Opinions will be referred to by date, for example "October 2, 1968 opinion"), the attorney general opined that the individual component parts of a prefabricated metal building which was prepackaged in a disassembled kit form, constituted single articles, rather than the building as a whole constituting the proper single article base. In an opinion dated July 5, 1973, the attorney general addressed structural steel frames, storage tanks, staircases, and other similar units manufactured and sold in a disassembled state.[2] This opinion concluded that, since the disassembled unit was assembled into an article of tangible personal property prior to its being annexed to realty, that the unit was a single article for local tax purposes. On January 9, 1981, the attorney general opined that large storage racks, once fully assembled, constituted realty and that the individual parts were single articles.

Each of the above-cited attorney general opinions turns on whether or not, upon final assembly, the alleged single article exists as a *single article of tangible personal property*. In the case of the prefabricated buildings and the large storage rack, the facts indicated that, upon assembly, the components lost their character as tangible personal property. In the case of the frames, tanks, and staircases, when assembled, the assembled unit had an independent existence as tangible personal property until further installation as a part of a building or other structure was performed. In other words, assembly of the parts did not destroy the character of the property as personal property. The use of this test is entirely in harmony with *Pidgeon-Thomas Iron Company v. Garner, supra.*

Once the parts of the building kit have been united, they constitute a permanent improvement to the realty, and therefore are real property upon assembly. The kit never exists as a single article of tangible personal property. The taxpayer's erection of the

[1] The opinion noted that the structures were custom made for a particular purpose, and if they were not used for that purpose would have no use except as scrap.

[2] This opinion does not rely on the Supreme Court's opinion in Pidgeon-Thomas Iron Company, supra, which was issued a few weeks before, on May 21, 1973.

building kit into a building is very similar to the erection of the structures in *Pidgeon-Thomas.*

The ruling request does point out two additional factors which require additional analysis.

It is stated that the buildings are transportable and in certain instances they have been disassembled and moved to another location. It appears that these buildings are not manufactured housing, modular buildings, or portable buildings, but rather they are traditional buildings that, in the majority of cases, are intended to be permanent. In sales and use tax matters, the law of fixtures, where intent is paramount, applies in determining if property is real or personal. *General Carpet Contractors v. Tidwell*, 511 S.W.2d 241 (Tenn. 1974).

Second, the ruling request cites *State ex rel. Russell v. LaManna,* 498 S.W.2d 891 (Tenn. 1973), for the proposition that the buildings do not become real property until completed and occupied. In *Russell,* the court ruled on the constitutionality of a statute directing assessors in the assessment of incomplete improvements to realty for property tax purposes. For sales and use tax purposes, the classification of property as realty or personalty for property tax purposes is not determinative. It is only a factor to be considered. *See, e.g., Process Systems, Inc. v. Huddleston,* 1996 Tenn. App. LEXIS 695. The buildings, once assembled, will generally be considered real property for sales tax purposes, even if further finishing work may be required to be done before the building is complete. If this were not the case, contractors who installed portions of an incomplete building would be considered vendors of tangible personal property and would be liable for sales tax on their entire contract price. Under these facts, the kit buildings do not have an existence as a single article of tangible personal property.

This ruling is based on a determination that the buildings involved are real property. This determination is based upon the limited facts as presented in the ruling request. However, more specific facts could change the determination of realty or personalty for a particular building. It should be noted that in a case where the building remains personalty, sales tax would be due on taxpayer's selling price for the building.

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